

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	File No. EB-04-IH-0487
Kenneth Wayne Diebel	)	Facility No. 34020
	)	NAL/Acct. No. 200732080006
Licensee of Station KHMB(FM)	)	FRN: 0008673386
Hamburg, Arkansas	)	

**ORDER**

**Adopted: November 21, 2006**

**Released: November 21, 2006**

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau, Kenneth Wayne Diebel, (“Diebel”), Licensee of Station KHMB(FM), Hamburg, Arkansas, and R&M Broadcasting, Inc., (“R&M”). The Consent Decree terminates an investigation initiated by the Enforcement Bureau to determine whether control of Station KHMB(FM) was transferred without Commission authorization from Diebel to R&M, in violation of, *inter alia*, Section 310(d) of the Act, 47 U.S.C. § 310(d), and Section 73.3540 of the Commission’s rules, 47 C.F.R. § 73.3540, and to determine whether Diebel complied with certain requirements of the Commission’s rules for broadcast licensees.<sup>1</sup>

2. The Enforcement Bureau, Diebel and R&M have negotiated the terms of a Consent Decree that resolve this matter and terminate the investigation. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether Diebel or R&M possess the basic qualifications, including character qualifications, to remain a Commission licensee.

4. Accordingly, **IT IS ORDERED**, pursuant to Section 4(i) of the Communications Act of 1934, as amended,<sup>2</sup> and the authority delegated by sections 0.111 and 0.311 of the Commission’s rules,<sup>3</sup> that the attached Consent Decree **IS ADOPTED**.

<sup>1</sup> These rules include the main studio rule, 47 C.F.R. § 73.1125, the chief operator rule, 47 C.F.R. § 73.1350 (a)-(c), the station log rules, 47 C.F.R. §§ 73.1800, 73.1820, and 73.1840, the public file rule, 47 C.F.R. § 73.3526, and the Emergency Alert System rules, 47 C.F.R. §§ 11.35, 73.1250, 73.1300, and 73.1350(h).

<sup>2</sup> 47 U.S.C. § 154(i).

<sup>3</sup> 47 C.F.R. §§ 0.111, 0.311.

5. **IT IS FURTHER ORDERED** that the above-captioned investigation into the matters described herein is terminated.

6. **IT IS FURTHER ORDERED** that copies of this order shall be sent by regular first class mail and certified mail - return receipt requested to Scott Cinnamon, Esq., counsel for Diebel and R&M; to Kenneth Wayne Diebel, 1707 Louisa Street, Rayville, Louisiana 71269; and R&M Broadcasting, Inc., 203 Fairview Road, Crossett, Arkansas 71635-4537.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief, Enforcement Bureau

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**CONSENT DECREE**

**I. INTRODUCTION**

1. This Consent Decree is entered into by the Enforcement Bureau of the Federal Communications Commission, Kenneth Wayne Diebel, and R&M Broadcasting, Inc.

**II. DEFINITIONS**

2. For the Purposes of this Consent Decree, the following definitions will apply:
- a. "Station" means Station KHMB(FM), Hamburg, Arkansas (Facility ID No. 34020);
  - b. "Diebel" refers to Kenneth Wayne Diebel, the sole owner and licensee of the Station;
  - c. "R&M" means R&M Broadcasting, Inc., owned and operated by Jack Reynolds, President, and Dennis Maxwell, Vice President;
  - d. "Non-Related Company" means a company or organization in which Diebel (and/or his spouse) or Jack Reynolds (and/or his spouse) or Dennis Maxwell (and/or his spouse), individually or collectively, is not an officer, director, partner, member, manager or holder (directly or indirectly) of an ownership interest.
  - e. "Commission" or "FCC" means the Federal Communications Commission.
  - f. "Bureau" means the Enforcement Bureau of the Federal Communications Commission;
  - g. "Act" means the Communications Act of 1934, as amended, 47 U.S.C. Section 151 *et seq.*;
  - h. "Rules" means the Commission's regulations set forth in Title 47 of the

Code of Federal Regulations;

- i. “Adopting Order” means an order of the Bureau adopting this Consent Decree;
- j. “Effective Date” means the date on which the Adopting Order is released;
- k. “Engineer” means a registered professional engineer who is experienced in broadcasting operations and regulations and who is retained by the Licensee;
- l. “Investigation” means the investigation conducted by the Bureau regarding compliance by Diebel and R&M with the Act and the Rules in connection with the operation of the Station;
- m. “Parties” means the Bureau, Diebel and R&M;
- n. “Licenses” means all authorizations, permits and licenses issued by the Commission in connection with the operation of the Station;
- o. “Licensee” means the holder of the Licenses;
- p. “Application” means the FCC 314 Application For Consent To Assignment of Broadcast Station Construction Permit Or License, dated November 14, 2005, file number BALH-20051115AAP, that is pending as of the Effective Date in the Commission’s Media Bureau;
- q. “Checklists” means the FCC’s Broadcast Self-Inspection Checklists (<http://www.fcc.gov/eb/be-chklsts/>) as of the Effective Date;
- r. “Violations” means violations of section 310(d) of the Act and section 73.3540 of the Rules<sup>4</sup> by Diebel and R&M, and violations of section 73.1125 of the Rules<sup>5</sup> by Diebel, as described in this Consent Decree; and
- s. “Crossett Studio” is a broadcast facility located in Crossett, Arkansas that is owned and operated by R&M and used as the Station’s main studio.

### III. BACKGROUND

3. On October 10, 2004, the Bureau received a complaint alleging that, for five years, R&M had been operating the Station from the Crossett Studio; that R&M claimed ownership of the facility and the broadcasting equipment therein during that time; and that R&M ran the day-to-day operations of the Station, including paying the Station’s employees and most

<sup>4</sup> See 47 U.S.C. § 310(d); 47 C.F.R. §§ 73.3540.

<sup>5</sup> See 47 C.F.R. § 73.1125.

Station expenses.

4. The complaint resulted in the commencement of an investigation by the Bureau which revealed apparent Violations with regard to the operation of KHMB(FM) by Diebel and R&M. Diebel violated section 73.1125 of the Rules because he failed to notify the Commission that the Crossett Studio was the Station's main studio location and he failed to provide any staff for the main studio. Diebel and R&M violated section 310(d) of the Act and section 73.3540 of the Rules because their oral time brokerage arrangement put R&M in *de facto* control of the Station.

5. Diebel, R&M and the Bureau acknowledge that any proceeding that might result from the Investigation will require the significant expenditure of public and private resources. In order to conserve such resources and to promote compliance by Diebel and R&M with the Act and the Rules, the Parties hereby enter into this Consent Decree in consideration of the mutual commitments made herein.

#### **IV. AGREEMENT**

6. Diebel and R&M each agree that the Bureau, by delegated authority of the Commission, has jurisdiction over the matters contained in this Consent Decree, and the authority to enter into and adopt this Consent Decree.

7. Diebel and R&M each agree to be legally bound by the terms and conditions of this Consent Decree. R&M represents and warrants that its signatory is duly authorized to enter into this Consent Decree on its behalf.

8. The Parties agree that this Consent Decree will become effective on the Effective Date. Upon the Effective Date, the Adopting Order and this Consent Decree will have the same force and effect as any other order of the Bureau and any violation of the terms of this Consent Decree will constitute a separate violation of a Bureau order, entitling the Bureau to subject Diebel and R&M to enforcement action for such violation, as well as enforcement action with respect to the Violations.

9. Diebel and R&M hereby admit to having committed the Violations.

10. Diebel and R&M hereby confirm their understanding that their conduct with respect to the operation and control of station KHMB(FM) was inconsistent with the requirements of the Communications Act and assert that they will not engage in such conduct or similar conduct in connection with any licensed station that they now or may hereafter control or be associated with in any manner, including station KMYF(FM).

11. In consideration of the terms and conditions set forth herein, the Bureau agrees to terminate its Investigation and notify the appropriate office within the Commission responsible for processing the Application that the Application may be processed in the ordinary course of business, without regard to the matters discussed herein in Paragraphs 3, 4, 9 and 10. From and after the Effective Date, in the absence of material new evidence, the Bureau agrees that it will not use the Violations in any action against Diebel or R&M, provided that they satisfy all of their obligations under this Consent Decree. Nothing in this Consent Decree will prevent the Bureau from instituting or recommending to the Commission any new investigation or enforcement proceeding against either Diebel or R&M or both in the event of any alleged future misconduct

involving violation of this Consent Decree, or violation of the Act or the Rules.

12. Diebel and R&M agree that within five (5) calendar days after the Effective Date, each will make a voluntary contribution to the United States Treasury in the amount of Twenty Thousand Dollars (\$20,000), for a combined contribution totaling Forty Thousand Dollars (\$40,000), as to which Diebel and R&M will be jointly and severally liable. Such payment will be made by each without further protest or recourse, by check or similar instrument, payable to the order of the Federal Communications Commission. Each such payment will include the NAL/Acct. No. and FRN No. referenced in the Adopting Order. Each payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Each payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Each payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

13. On or before January 1, 2007 (but no earlier than 30 days prior), and January 1, 2008 (but no earlier than 30 days prior), the Licensee will inspect the Station and certify in writing (supported by a written certification of compliance from the Engineer participating in the inspection with respect to engineering matters) that it is in compliance with the Act, all Rules and all terms and conditions of its Licenses. The Checklists will be used as a guide for conducting each inspection and making each certification. The failure by or inability of the Licensee to so certify will result in enforcement action by the Bureau against the Licensee, at the Bureau's discretion.

14. All certifications referenced in Paragraph 13 above must be delivered to the Chief of the Investigations and Hearings Division of the Bureau within fourteen (14) days of the applicable inspection deadline.

15. Diebel and R&M each agrees that any violation of this Consent Decree, including but not limited to a failure to make any of the payments required by Paragraph 12 hereof, will constitute a separate violation of a Commission order and subject each to appropriate administrative sanctions.

16. This Consent Decree will be binding on Diebel's and R&M's transferees, successors and assigns, provided that in the event of an assignment or transfer of the Licenses to a Non-Related Company, only the obligations of Paragraph 12 will be binding on the assignee or transferee.

17. Diebel and R&M each waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order, provided the Order adopts the Consent Decree without change, addition or modification.

18. Diebel and R&M each agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. Section 504 and 47 C.F.R. Section 1.1501 *et seq.*, relating to the matters discussed in this Consent Decree.

19. Diebel, R&M and the Bureau each agrees that the effectiveness of this Consent Decree is expressly contingent upon issuance of the Order, provided the Order adopts the Consent Decree without change, addition or modification.

20. Diebel, R&M and the Bureau each agrees that if Diebel, R&M, the Commission or the United States on behalf of the Commission, brings a judicial action to enforce the terms of the Order adopting this Consent Decree, none of Diebel, R&M or the Commission will contest the validity of the Consent Decree or Order, and Diebel, R&M and the Commission will waive any statutory right to a trial *de novo* with respect to any matter upon which the Order is based (provided in each case that the Order is limited to adopting the Consent Decree without change, addition, or modification), and will consent to a judgment incorporating the terms of this Consent Decree.

21. Diebel, R&M and the Bureau agree that in the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, it will become null and void and may not be used in any manner in any legal proceeding.

22. This Consent Decree may be signed in counterparts and/or by telecopy and, when so executed, the counterparts, taken together, will constitute a legally binding and enforceable instrument whether executed by telecopy or by original signatures.

**FEDERAL COMMUNICATIONS COMMISSION**

\_\_\_\_\_  
By: Kris Anne Monteith  
Chief, Enforcement Bureau

Date: \_\_\_\_\_

**LICENSEE OF STATION**

\_\_\_\_\_  
Kenneth Wayne Diebel (individually)

Date: \_\_\_\_\_

**R&M BROADCASTING, INC.**

\_\_\_\_\_  
By: Jack Reynolds, President

Date: \_\_\_\_\_